

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JESUS GONZALEZ, an individual,

Plaintiff,

Case No.: 1:18-cv-08315-LAK

-against-

AMERITANIA 54TH ASSOCIATES, LLC,  
a New York Limited Liability company,

Defendant.  
-----X

**ANSWER**

Defendant Ameritania 54<sup>th</sup> Associates, LLC (“Ameritania”), by its attorneys, Schneider Buchel LLP, as and for an Answer to the plaintiff’s Complaint dated September 12, 2018 (the “Complaint”), hereby responds, upon information and belief, as follows:

**INTRODUCTION**

1. Admits the truth of the allegations contained in paragraph “1” of the Complaint.
2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “2” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

**JURISDICTION AND VENUE**

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.
4. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “4” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

5. Denies each and every allegation contained in paragraph “5” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

6. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

### **PARTIES**

7. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Complaint.

8. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint.

9. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Complaint.

10. Admits the truth of the allegations contained in paragraph “10” of the Complaint.

### **AS AND TO COUNT I OF THE COMPLAINT**

11. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

12. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

13. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination

14. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

15. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

16. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

17. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

18. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

19. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

20. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

21. Denies each and every allegation contained in paragraph "21" of the Complaint.

22. Denies each and every allegation contained in paragraph "22" of the Complaint.

- 23. Denies each and every allegation contained in paragraph "23" of the Complaint.
- 24. Denies each and every allegation contained in paragraph "24" of the Complaint.
- 25. Denies each and every allegation contained in paragraph "25" of the Complaint.
- 26. Denies each and every allegation contained in paragraph "26" of the Complaint.
- 27. Denies each and every allegation contained in paragraph "27" of the Complaint.
- 28. Denies each and every allegation contained in paragraph "28" of the Complaint.
- 29. Denies each and every allegation contained in paragraph "29" of the Complaint.
- 30. Denies each and every allegation contained in paragraph "30" of the Complaint.
- 31. Denies each and every allegation contained in paragraph "31" of the Complaint.
- 32. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

**AS AND TO COUNT II OF THE COMPLAINT**

- 33. Defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "32" above, as if set forth at length herein.
- 34. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.
- 35. Denies each and every allegation contained in paragraph "35" of the Complaint.
- 36. Denies each and every allegation contained in paragraph "36" of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.
- 37. Denies each and every allegation contained in paragraph "37" of the Complaint.
- 38. Denies each and every allegation contained in paragraph "38" of the Complaint.

**AS AND TO COUNT III OF THE COMPLAINT**

39. Defendant repeats, reiterates and realleges each and every response contained in paragraphs “1” through “38” above, as if set forth at length herein.

40. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Complaint and respectfully refers all questions of law to this Honorable Court for its ultimate determination.

41. Denies each and every allegation contained in paragraph “41” of the Complaint.

42. Denies each and every allegation contained in paragraph “42” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

43. Plaintiff’s complaint, in whole or in part, fails to state a cause of action against the answering defendant.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

44. The Americans with Disabilities Act as pled herein by plaintiff is inapplicable.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

45. The New York City Human Rights Law and/or the New York State Human Rights Law as pled herein by plaintiff are inapplicable.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

46. Plaintiff’s complaint, in whole or in part, is barred by the doctrines of waiver, estoppel, ratification and/or laches.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

47. Plaintiff’s complaint, in whole or in part, is barred by the applicable statute of limitations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

48. Plaintiff has not been denied the full and safe access to all of the benefits, accommodations and services of the subject facility's website.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

49. Plaintiff lacks standing to bring this action and has failed to properly allege standing to any and all of the claims attempted to be alleged in the complaint.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

50. Plaintiff failed to provide any notice to defendant of any of the alleged violations prior to commencing this action.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

51. Injunctive relief, as pled herein by plaintiff, is inappropriate.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

52. Defendant has not refused to take steps, nor refused to make reasonable modifications, to its website.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

53. The plaintiff's complaint is barred, in whole or in part, by the failure to satisfy the statutory and administrative prerequisites to the bringing of a legal action.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

54. Upon information and belief, plaintiff is not disabled within the meaning of the ADA. But assuming that plaintiff suffered from a qualifying disability, than plaintiff could not, with reasonable accommodation, enjoy the right or rights in question.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

55. Subject to proof during discovery, all or part of plaintiff's claims for damages are barred or limited by the Doctrine of After-Acquired Evidence.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

56. The instant lawsuit should be barred under the legal theory of champerty.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

57. The instant lawsuit should be barred under the legal theory of barratry.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

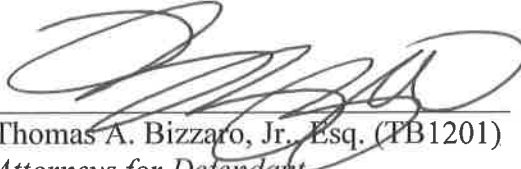
58. Defendant's website complies with all Federal, State, and Local statutes, rules, and/or ordinances.

WHEREFORE, Defendant Ameritania 54<sup>th</sup> Associates, LLC demands judgment dismissing the plaintiff's complaint in its entirety, with prejudice; awarding attorneys' fees, costs and disbursements; objecting to a trial by jury of all issues and matters including, but not limited to, those issues and matters relating to equitable relief; together with such other and further relief as this Court deems just, equitable and proper.

Dated: Garden City, New York  
November 14, 2018

SCHNEIDER BUCHEL LLP

By:

  
Thomas A. Bizzaro, Jr., Esq. (TB1201)  
*Attorneys for Defendant*  
Ameritania 54<sup>th</sup> Associates, LLC  
666 Old Country Road, Suite 412  
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(516) 393-5555

TO: Law Offices of Nolan Klein, P.A.  
*Attorneys for Plaintiff*  
39 Broadway, Suite 2250  
New York, New York 10006

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer was mailed by first class mail, postage prepaid, this ~~14<sup>th</sup>~~ <sup>19<sup>th</sup></sup> day of November, 2018, to all counsel of record as indicated on the service list below:



Thomas A. Bizzaro, Jr., Esq. (TB1201)

**SERVICE LIST**

Law Offices of Nolan Klein, P.A.  
*Attorneys for Plaintiff*  
39 Broadway, Suite 2250  
New York, New York 10006